

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

BERNARD JOHNSON,
216638,

Petitioner,

v.

PATRICE RICHIE, Warden,
STEVEN T. MARSHALL,
Attorney General of the State of
Alabama, and the STATE OF
ALABAMA,

Respondents.

CASE NO. 1:18-CV-575-WKW
[WO]

ORDER

On June 21, 2018, the Magistrate Judge filed a Recommendation (Doc. # 2), to which Petitioner Bernard Johnson has timely objected (Doc. # 3). Mr. Johnson objects to the Magistrate Judge's characterization of his habeas corpus application as a second or successive petition subject to the limitations of 28 U.S.C. § 2244(b). Relying on *Insignares v. Secretary, Florida Department of Corrections*, 755 F.3d 1273, 1278 (11th Cir. 2014), Mr. Johnson contends that his present application challenges a different judgment than did his previous petitions and is therefore not a "second or successive" application. But unlike the petitioner in *Insignares*, who was re-sentenced and thus subject to a new judgment, *see* 755 F.3d at 1278, Mr.

Johnson's alleged "new judgment" is the denial by the Alabama state court of his Rule 32 post-conviction petition. Thus, the underlying conviction and sentence that Mr. Johnson seeks to attack in his present petition are the same ones he challenged in his state-court Rule 32 motion and the same ones he has challenged in this court twice before. (*See* Doc. # 2, at 2.)

Accordingly, it is ORDERED that the Recommendation is ADOPTED in part and MODIFIED in part, and that this case is DISMISSED without prejudice in accordance with the provisions of 28 U.S.C. § 2244(b)(3)(A) because Mr. Johnson has failed to obtain the requisite order from the Eleventh Circuit Court of Appeals authorizing a federal district court to consider his successive habeas application. *See Burton v. Stewart*, 549 U.S. 147, 157 (2007) (explaining that the requirements of 28 U.S.C. § 2244(b) are jurisdictional in nature); *Stalley ex rel. U.S. v. Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1235 (11th Cir. 2008) (holding that a court lacking jurisdiction should issue a dismissal without prejudice).

Final judgment will be entered separately.

DONE this 10th day of July, 2018.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE